

EXHIBIT “A”

(1 of 3)

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

5 MOSES PEREZ and DEE PEREZ,) Case No. 1:17-cv-02610

6 Plaintiffs,

7 vs.

8 K & B TRANSPORTATION,
9 INC., and KIARA WHARTON,

10 Defendants.

11 DEPOSITION TAKEN ON
12 BEHALF OF PLAINTIFF

13 DEPOSITION OF: KIARA WHARTON

14 DATE: March 23, 2018

15 TIME: 8:55 a.m.

16 PLACE: Delta Marriott/Marina
17 385 East 4th Street
18 South Sioux City, NE 68776

19 Angela M. Ickler, RPR

20 Latimer Reporting "402-476-1153" latimer@latimer-reporting.com



1 I-N-D-E-X

2 WITNESS: DIRECT CROSS REDIRECT RECROSS

3 Kiara Wharton 4 132 185 191

4 EXHIBITS: MARKED OFFERED

5 1. 392.14 Hazardous
6 conditions; extreme
7 caution 53 --
8 2. Drawing 145 --
9 3. Illinois Traffic
10 Crash Report 151 --
11 4. Google Maps 151 --
12 5. Phone records 185 --

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1 A-P-P-E-A-R-A-N-C-E-S

2
3 APPEARING FOR PLAINTIFFS:

4 Ms. Hadas M. Benhamou
5 Attorney at Law
6 1 East Wacker Drive
7 Suite 510
8 Chicago, IL 60601
9 hcorey@coganpower.com

10 APPEARING FOR DEFENDANTS:

11 Ms. Lamis G. Eli
12 Attorney at Law
13 55 West Monroe Street
14 Suite 3800
15 Chicago, IL 60603
16 Lamis.el@wilsonelser.com

17 ALSO PRESENT:

18 Mr. Matt Tipton, K & B Representative

19 Angela M. Ickler, RPR

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1 KIARA WHARTON,

2 Of lawful age, being first duly cautioned and
3 solemnly sworn as hereinafter certified, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. BENHAMOU:

7 Q. Will you, please, state your first and
8 spell your last name for the record?

9 A. It is Kiara. Last name, W-H-A-R-T-O-N.

10 Q. And, Kiara, do you prefer that I call
11 you Ms. Wharton or by your first name?

12 A. It doesn't matter.

13 Q. Okay. Then I will call you Ms. Wharton.

14 As you already know, I have been retained by
15 the plaintiffs, Moses and Dee Perez, to
16 represent them for personal injuries they
17 sustained on January 20, 2016, in the state of
18 Illinois after an accident that you were aware
19 of.

20 Before we get started, let me state
21 for the record that this deposition will be
22 taken pursuant to notice and agreement by both
23 parties. The deposition will be pursuant to
24 the federal rules of civil procedure and for
25 the Perez case that is currently pending in the
United States District Court for the Northern

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1 District of Illinois.

2 Ms. Wharton, since this is the first
3 time you and I are meeting, I would just on the
4 record reserve my right to re-depose you
5 limited in scope to anything new that we
6 discover exists, maybe in terms of a document
7 or record, that I haven't been aware of
8 previously, okay?

9 A. Okay.

10 Q. All right. Since you sat through the
11 deposition yesterday, you know the ground
12 rules, correct?

13 A. Yes.

14 Q. Have you ever been deposed before?

15 A. No.

16 Q. Okay. So let me state, if you do not
17 understand my question, it is probably my bad.
18 Please ask me to clarify, and I will. If you
19 do offer an answer, I will assume that meant
20 you understand my question, okay?

21 A. Okay.

22 Q. As you know, all answers have to be
23 verbal, okay?

24 A. Yes.

25 Q. If you don't know an answer, an "I don't

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1 A. Yes.

2 Q. And your destination was Meijer in
3 Newport, Michigan; is that correct?

4 A. After I left my first one, yes.

5 Q. Okay. And on the day in question, I
6 believe you started in Waterloo, Iowa, correct?

7 A. Right.

8 Q. And then you had one stop in Urbana,
9 Illinois, correct?

10 A. Right.

11 Q. And then from Urbana, Illinois, you were
12 supposed to proceed to Newport, Michigan, sound
13 correct?

14 A. Yes.

15 Q. And do you agree with me that Meijer is
16 a critical customer per the K & B rules and
17 regulations?

18 A. Yeah.

19 Q. And can we further agree that your
20 failure to timely deliver the Tyson Foods'
21 products to Meijer in Newport, Michigan, would
22 result in your, quote, gross misconduct
23 discharge, meaning that you would be fired and
24 you would be ineligible for unemployment?

25 MS. ELI: I'm going to object to

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1 know" is a perfectly acceptable answer, but if
2 I ask you a question like, "What is your date
3 of birth," and you say, "I don't know," then we
4 are going to have a harder time, okay?

5 A. Yes.

6 Q. All right. And then this is the only
7 chance that I get to talk to you, so will you
8 please agree to give me full and complete
9 answers to my questions to the best of your
10 ability?

11 A. Okay.

12 Q. Can we also agree that when I say FMCSR,
13 I mean the *Federal Motor Carrier Safety*
14 *Regulations*, and when I say "wreck" or
15 "collision," I mean the incident of January 20,
16 2016?

17 A. Okay.

18 Q. Sound fair?

19 A. Yes.

20 Q. Okay. Ms. Wharton, isn't it true that
21 at the time of the wreck, you were hauling a
22 critical customer's load to Meijer in Newport,
23 Michigan?

24 A. I was hauling a meat load.

25 Q. A Tyson load, correct?

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1 that characterization, and the foundation of
2 that as she is not in a position to fire
3 herself.

4 Q. (By Ms. Benhamou) Okay. Do you
5 understand my question?

6 A. It was a little --

7 Q. I can break it up.

8 A. Yeah.

9 Q. Sure. Are you familiar with the K & B
10 policies concerning critical customers?

11 A. Meaning that we must deliver on time?

12 Q. Correct?

13 A. Yes.

14 Q. And do you know what the penalties are
15 for failure to timely deliver to a critical
16 customer?

17 A. That's never been discussed with me.

18 Q. No?

19 A. I always deliver on time.

20 Q. No, understood. Understood. But in the
21 K & B training, there was a policy that you
22 received about the two-strike rule and about
23 critical customers?

24 A. It's been awhile so I really don't
25 remember.

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1 Q. That's fine. Then let me refresh your
2 recollection. This is Bates stamped Perez
3 K&B128, and you can ignore my scribbles at the
4 bottom.

5 MS. BENHAMOU: Lamis, do you
6 want to see it first? I'm sorry.

7 MS. ELI: That's fine.

8 Q. (By Ms. Benhamou) You can ignore my
9 scribbles at the bottom in blue, but would you
10 agree that at the bottom of the page your
11 signature appears?

12 A. Yes.

13 Q. And do you recall seeing this document?

14 A. Yeah. I don't really remember it being
15 a two strike, if you are late, you get fired
16 automatically type of thing.

17 Q. You would agree with me that it is
18 important to read anything before signing it,
19 correct?

20 A. Uh-huh.

21 Q. Yes?

22 A. Yes.

23 Q. And so at some point, whether it was
24 yesterday or two years ago, you read this
25 document, correct?

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1 sentence of the one, two, third paragraph on
2 the page.

3 A. This here (indicating)?

4 Q. Correct.

5 A. The above-listed critical customers will
6 count double; hence any late for these
7 specific customers will result in a gross
8 misconduct discharge. Keep in mind that
9 misconduct -- misconduct discharges reflect
10 poorly on your DAC/USIS driver database info,
11 and you are ineligible for unemployment.

12 Q. Okay. Thank you.

13 All right. Ms. Wharton, did you review
14 anything in anticipation for your deposition
15 today?

16 A. Other than going over questions, not
17 really, no.

18 Q. So I do not want to know about any
19 conversations that you had with Lamis. Those
20 are privileged.

21 A. Okay.

22 Q. I am just wondering if you looked at any
23 documents, like written discovery or the
24 depositions of the plaintiffs?

25 A. Other than what I discussed with her,

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1 A. Right.

2 Q. Okay. And when you read it before you
3 signed it, you understood the terms, correct?

4 A. Right.

5 Q. Okay. And then since you read it and
6 signed, are you telling me that you haven't
7 been refreshed on the two-strike rule?

8 A. Yeah, I would say so. Seeing as I have
9 not delivered anything late, I've not had to go
10 through it again or have somebody reprimand me
11 about it.

12 Q. Understand completely. Understood. So
13 then if you don't mind, could you read into the
14 record the list of critical customers on Page
15 128?

16 A. Walmart Stores and Warehouses, Aldi's,
17 Meijer Stores, Safeway Stores, Save-a-lot
18 Stores --

19 Q. Slow down a little bit, sorry.

20 A. Kroeger Stores.

21 Q. Thank you.

22 A. Super Value Stores and any Military
23 deliver point.

24 Q. Thank you so much. And then would you
25 also, please, read the start of this last

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1 no.

2 Q. Okay. So only oral communications,
3 correct?

4 A. Right.

5 Q. How much time in total do you think you
6 spent preparing for today?

7 A. You mean looking at paperwork or just
8 discussing it with?

9 Q. Well, did you look at paperwork?

10 A. No. I just verbally, we just sat and we
11 talked about an hour.

12 Q. About an hour?

13 A. Yeah.

14 Q. Okay. Since the wreck, have you gone
15 back to the scene of the accident?

16 A. Many times.

17 Q. Okay. You've driven through that way?

18 A. Many times.

19 Q. And in going back, have you ever done an
20 accident reconstruction of the January 20,
21 2016, incident?

22 A. You mean replanned it in my head?

23 Q. No. I mean, gone back with any
24 professional accident reconstructionist?

25 A. Oh, no.

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- 1 Q. Have you gone back over it in your head?
- 2 A. Many times.
- 3 Q. Okay. And we will get to that in a
- 4 minute so thank you. Please tell me your date
- 5 of birth?
- 6 A. 11/06/1989.
- 7 Q. Does that make you 27 in January of
- 8 2016?
- 9 A. Probably, yeah.
- 10 Q. Okay. I have a November birthday, too.
- 11 Can I have the last four digits of your
- 12 social security number?
- 13 A. 5960.
- 14 Q. Okay. Are you currently on any
- 15 medication?
- 16 A. No.
- 17 Q. Were you on January 20th --
- 18 A. No.
- 19 Q. -- 2016? So fair to say, you are not on
- 20 any medications which would prohibit you from
- 21 testifying competently today?
- 22 A. Correct.
- 23 Q. Have you ever been diagnosed with sleep
- 24 apnea?
- 25 A. No.

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- 1 A. Uh-huh.
- 2 Q. Yes?
- 3 A. Yes.
- 4 Q. And prior to the P.O. box, where were
- 5 you living? Well, strike that actually.
- 6 When you are off duty, where do you go?
- 7 A. Now or then?
- 8 Q. Currently.
- 9 A. Wherever. If I want to visit my sister,
- 10 I go stay with her, and if I'm just wherever I
- 11 am and I want to take a break, I say stop where
- 12 I am, and I'll go get a hotel room.
- 13 Q. And where does your sister reside?
- 14 A. Lubbock, Texas.
- 15 Q. Okay. How long has she lived in
- 16 Lubbock, Texas?
- 17 A. She has lived there for, I don't know,
- 18 two almost three years, close to that.
- 19 Q. And your sister's name?
- 20 A. Jasmine Bates (spelled phonetically).
- 21 Q. And does your sister live at that
- 22 residence with anybody else?
- 23 A. I don't think so.
- 24 Q. Where would you consider yourself born
- 25 and raised?

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- 1 Q. Diabetes?
- 2 A. No.
- 3 Q. Hyperglycemia?
- 4 A. No.
- 5 Q. Heart problems?
- 6 A. No.
- 7 Q. Any other health problems?
- 8 A. No.
- 9 Q. Okay. Can I please have the name of
- 10 your family doctor if you have one?
- 11 A. Don't have one.
- 12 Q. Have you ever seen any specialist, like
- 13 a cardiologist?
- 14 A. No.
- 15 Q. Where do you currently reside?
- 16 A. I have a P.O. box.
- 17 Q. Okay. And what is your P.O. box
- 18 address?
- 19 A. 1530 PB Lane -- for the box number, it
- 20 is hash tag W3730, Wichita Falls, Texas 76302.
- 21 Q. And for how long have you had this P.O.
- 22 box?
- 23 A. For about a year now.
- 24 Q. Okay. So it is March of 2018, since
- 25 about early 2017?

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- 1 A. Indianapolis, Indiana.
- 2 Q. And until what age did you continue to
- 3 reside in Indiana?
- 4 A. I think I was 23.
- 5 Q. And once you hit 23, where did you go?
- 6 A. Charleston, South Carolina.
- 7 Q. Yeah, I noticed that you lived in a few
- 8 really cool places. So you -- I saw
- 9 Charleston, South Carolina, and then after
- 10 Charleston, where were you?
- 11 A. Then I was -- it was close to Denver,
- 12 Colorado. I don't really remember. I was
- 13 there for a few weeks before I went to truck
- 14 driving school.
- 15 Q. Okay. So you did truck driving school
- 16 in Denver?
- 17 A. No, in Utah. Salt Lake City, Utah.
- 18 Q. And who was the school through?
- 19 A. Central Refrigerated now Swift.
- 20 Q. Understood. How long was that course?
- 21 A. I think it was close to three weeks.
- 22 Q. And were there tests you had to pass?
- 23 A. Yeah. There was a question test, and
- 24 then there were actual driving tests. For the
- 25 license part, I had to go to the DMV for --

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1 there was a license before you get your
2 driver's license.
3 Q. Before you get your CDL, you get your
4 CDL permit, right?
5 A. Permit, yeah.
6 Q. Okay, cool. Did you pass all of those
7 tests on the first try?
8 A. No.
9 Q. Which one did you not pass on the first
10 time?
11 A. I got my permit. Did that on the first
12 try, and then every, there was like three
13 different sections to get my actual CDL. I
14 failed the pre-trip part, then I passed it.
15 And then I failed the backing part, and then I
16 passed it, and then I passed my driving part.
17 Q. Got it. I actually tried to do a few
18 online, and they are not that easy. So at what
19 age did you first obtain your regular driver's
20 license --
21 A. Eighteen.
22 Q. -- 16? Eighteen. And was that issued
23 in the state of Indiana?
24 A. Yes.
25 Q. And then did you get a South Carolina

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1 Q. So your Indiana license had expired when
2 you got your Charleston license, correct?
3 A. I surrendered it.
4 Q. Oh, you surrender Indiana, too?
5 A. You have to.
6 Q. And are you allowed to have a CDL as
7 well as a regular license at the same time?
8 A. They count as the same thing.
9 Q. Okay. Please provide me with your cell
10 phone number?
11 A. 317-332-3563.
12 Q. And in 2016 was that the same number?
13 A. Yes.
14 Q. Did you have two cell phones in 2016?
15 A. No, not really.
16 Q. What do you mean "not really"?
17 A. I pay for my sister's cell phone under
18 my account.
19 Q. Got it. And that is Jasmine?
20 A. Right.
21 Q. Okay. And that account was with Team
22 Mobile, correct?
23 A. Right.
24 Q. Do you still have Team Mobile?
25 A. Yes.

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1 license after that?
2 A. Yes.
3 Q. Okay. And around what date did you get
4 a South Carolina license, if you know?
5 A. I don't.
6 Q. Okay. Did you have a license in
7 Colorado as well?
8 A. I had two. I had to surrender my South
9 Carolina driver's license for Utah.
10 Q. And I'm sorry, for Utah, did you get a
11 Utah license, too?
12 A. The permit for the CDL.
13 Q. Got it. So your first CDL was issued by
14 the state of Utah?
15 A. Uh-huh.
16 THE COURT REPORTER: Yes?
17 THE WITNESS: Yes. Sorry.
18 Q. (By Ms. Benhamou) And you know that you
19 are not federally permitted to have multiple
20 licenses from separate states at the same time,
21 correct?
22 A. Yes.
23 Q. Okay. And so there was no overlap,
24 correct?
25 A. No.

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1 Q. Can you, please, provide me with your
2 current email address?
3 A. Kmwharton@gmail.com.
4 Q. And was that your email in 2016?
5 A. Yes.
6 Q. Any other email addresses you would use
7 in 2016?
8 A. No, but I do have a Yahoo that I
9 actually never use.
10 Q. Probably don't even remember the
11 password?
12 A. No.
13 Q. Do you have a K & B email address?
14 A. I don't think so.
15 Q. Please don't take offense, have you ever
16 pled guilty or been convicted of a crime
17 involving dishonesty or fraud?
18 A. No.
19 Q. What kind of license do you currently
20 carry?
21 A. A CDL A.
22 Q. And what does the "A" designation
23 signify?
24 A. I have no clue. I just know it allows
25 me to drive, I think anything. A combination

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1 -- no, I think it just lets me drive semis.
 2 Q. Semis. Instead of like pallet jack,
 3 specialty trucks, or something?
 4 A. Yeah, that is something else.
 5 Q. Okay. And the CDL that you currently
 6 carry is issued by which state?
 7 A. Texas.
 8 Q. Do you have it on you?
 9 A. Yes.
 10 Q. Can I see it, please? You can produce
 11 it to your counsel first.
 12 A. (Witness complies.)
 13 MS. BENHAMOU: Any objections to
 14 me reading the number into the record?
 15 MS. ELI: Yeah. Let's do that
 16 off the record.
 17 MS. BENHAMOU: Off the record
 18 then.
 19 (An off-the-record discussion
 20 took place at this time.)
 21 MS. BENHAMOU: Back on the
 22 record, please.
 23 Q. (By Ms. Benhamou) You know what, I
 24 didn't look, but you are currently wearing
 25 glasses, correct?

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1 A. Yeah.
 2 Q. When is the last time you saw an eye
 3 doctor?
 4 A. November of this year.
 5 Q. 2017?
 6 A. '17, yep.
 7 Q. And are your eye exams always regular?
 8 A. (The witness shook her head in the
 9 negative.)
 10 Q. No?
 11 A. No.
 12 Q. Any problems that have come up within
 13 the last five years?
 14 A. No. According to the lady that looked
 15 at my eyes, my prescription has been the same.
 16 Q. Okay. And are you nearsighted or
 17 farsighted?
 18 A. Near.
 19 Q. Meaning that you have difficulty seeing
 20 distance?
 21 A. Yeah.
 22 Q. Same.
 23 All right. And then I noticed that
 24 prior to becoming a truck driver, you were a
 25 CNA?

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1 A. Uh-huh.
 2 Q. Yes?
 3 A. Yes.
 4 Q. And at what age did you first require
 5 glasses?
 6 MS. ELI: You can look at her
 7 license again if you didn't note that.
 8 MS. BENHAMOU: I didn't note
 9 that, but it is fine, since we were off the
 10 record, I don't care.
 11 Q. (By Ms. Benhamou) Does your license
 12 contain a restriction for your eyes?
 13 A. Yes.
 14 Q. Do you wear your glasses at all times
 15 when you are driving?
 16 A. Yes.
 17 Q. Do you ever wear contacts?
 18 A. No.
 19 Q. Have you ever had Lasik eye surgery?
 20 A. No.
 21 Q. Back to the question about the age you
 22 started wearing glasses?
 23 A. Middle school probably.
 24 Q. So safe to say you required glasses in
 25 January of 2016?

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1 A. Correct.
 2 Q. Does that stand for certified nurse
 3 anesthetist?
 4 A. Certified nurse aid.
 5 Q. Aid, got it. Tell me about the process
 6 by which you got that license?
 7 A. I had to take a course for Indiana. It
 8 was 105 hours of classroom and practical
 9 knowledge. For the test, they would just
 10 randomly select three different types of things
 11 we should know, like how to do the Heimlich
 12 Maneuver, or making a bed, or, you know,
 13 lifting somebody from one place to another.
 14 Q. Changing compression socks?
 15 A. No.
 16 Q. Maybe not?
 17 A. No.
 18 Q. So it did involve a few tasks, correct?
 19 A. Right.
 20 Q. Okay. And for how many years were you a
 21 CNA?
 22 A. About two.
 23 Q. And in what states were you a CNA?
 24 A. Indiana and South Carolina.
 25 Q. And then I saw that you worked in a

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1 restaurant; is that correct?
 2 A. Yes.
 3 Q. Did you ever drive for the restaurant,
 4 like delivery of food?
 5 A. No, I was a hostess.
 6 Q. Okay. Do you recall around what year
 7 you were a hostess?
 8 A. No.
 9 Q. Do you -- what were the two years you
 10 were a CNA?
 11 A. Let's see, as a truck driver --
 12 Q. I can give you a pad of paper if you
 13 need.
 14 A. I would probably say 2011 to 2013.
 15 Q. Are there any other jobs you had prior
 16 to going into trucking that we haven't
 17 discussed?
 18 A. Temp agency. I was a housekeeper.
 19 Q. Around what year was that?
 20 A. 2013.
 21 Q. In South Carolina?
 22 A. Yes.
 23 Q. All right. And then in 2013, you also
 24 made the switch into trucking, correct?
 25 A. No. I think that was 2014.

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1 hotel.
 2 Q. And it sounded like something you would
 3 be interested in?
 4 A. No.
 5 Q. No.
 6 A. I wasn't interested in being a truck
 7 driver.
 8 Q. Okay. So then your plans fell apart,
 9 and you decided you needed something new?
 10 A. Yeah, and I was looking through
 11 Craigslist, and it was like, come drive for
 12 Central Refrigerated, and I was like, okay.
 13 Q. Okay. Cool. And so that was in 2014,
 14 yes?
 15 A. Yes.
 16 Q. And do you know the month roughly?
 17 A. I would say I went there in March.
 18 Q. So about four years ago almost exactly?
 19 A. Yeah. That is about how long I got my
 20 actual physical license, the end of March,
 21 beginning of April.
 22 Q. All right. And then so you already
 23 answered my question, you found Central
 24 Refrigerated Services through Craigslist?
 25 A. Uh-huh.

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1 Q. Okay. And what made you switch from
 2 kind of the health care field to trucking?
 3 A. My plans completely fell apart. So I
 4 had to figure out something else to do, and
 5 truck driving was mentioned to me when I was a
 6 hostess so I was like well, why not.
 7 Q. Sure. And then was it at that point
 8 that you moved to Colorado and then took the
 9 class in Utah?
 10 A. No, no.
 11 Q. Okay. So walk me through what happened
 12 next?
 13 A. Colorado and then I did the class in
 14 Utah.
 15 Q. Right. But so it was -- where were you
 16 working as a hostess, I guess?
 17 A. Indiana. I was about 18, 19. So that
 18 would have been 2008, 2009.
 19 Q. And that is when you were kind of
 20 briefly told about the truck driving lifestyle?
 21 A. Uh-huh. There where I worked, there was
 22 a hotel -- a Holiday Inn I think it was -- and
 23 then there was a Schneider Truck Driving school
 24 like further down the way. A lot of truck
 25 drivers would come in and eat and stay at the

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1 Q. Who was your supervisor with Central
 2 Refrigerated?
 3 A. I can't say.
 4 Q. Because you don't remember?
 5 A. Yeah.
 6 Q. That's fine. Were you an over-the-road
 7 truck driver?
 8 A. Over the road. For them, I drove the
 9 lower 48.
 10 Q. Everything but Hawaii and --
 11 A. -- and Alaska.
 12 Q. Thank you. Can you tell me your route,
 13 were you just all over?
 14 A. Yeah, it just -- each destination was
 15 different. I went somewhere different almost
 16 everyday.
 17 Q. Almost everyday, okay. And for how long
 18 were you employed with Central Refrigerated
 19 Service total?
 20 A. A little over a year.
 21 Q. If I said 14 months, does that sound
 22 right?
 23 A. Yeah. I think I left April-ish, May.
 24 Q. What were the conditions upon you
 25 leaving?

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1 A. It was the pay.
 2 Q. Not enough?
 3 A. No. Now that I know what better pay
 4 looks like, no it wasn't. And I wanted to, I
 5 don't know, drive locally for a little bit, but
 6 then that was worse.
 7 Q. Okay. And so when you drove locally,
 8 was that when you were driving in Arizona?
 9 A. No.
 10 Q. Okay. So tell me after you went from
 11 Central Refrigerated, you said Central
 12 Refrigerated became Swift Transportation?
 13 A. Right.
 14 Q. And did that occur within the two --
 15 well, the 14 months?
 16 A. After they became Swift -- first, like,
 17 Central Refrigerated was bought into Swift, but
 18 I still went through the refrigerated division.
 19 Q. Got it. Do you -- so you didn't have
 20 like a Swift supervisor?
 21 A. No, Central Refrigerated.
 22 Q. And then you left and went where next?
 23 A. D.M. Bowman.
 24 Q. And tell me how you found D.M. Bowman?
 25 A. I don't think it was Craigslist, but it

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1 A. Uh-huh.
 2 THE COURT REPORTER: Yes?
 3 THE WITNESS: Yes.
 4 Q. (By Ms. Benhamou) And can you give me a
 5 time frame on the state of your employment with
 6 D.M. Bowman, is that April of 2015 or May of
 7 2015?
 8 A. I think 2015, yeah, because I went to
 9 K & B in June. So May, end of May.
 10 Q. You went to K & B in May of 2015,
 11 correct?
 12 A. I believe so.
 13 Q. So you were only with D.M. Bowman for
 14 how long then?
 15 A. A few days.
 16 Q. What were the conditions upon you
 17 leaving D.M. Bowman?
 18 A. They lied. The recruiter told me that I
 19 would be driving about 600 miles everyday, and
 20 for the amount of pay that they were offering
 21 me, I was like, okay, that is doable. But when
 22 I got there, it was just an Indiana-to-Chicago
 23 route and back. That is, like, only a couple
 24 hundred miles everyday with traffic, and I'm
 25 delivering. I wasn't going to do that.

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1 was some type of online job.
 2 Q. So they didn't do any recruiting or
 3 anything?
 4 A. No.
 5 Q. And then did you have to sit for any
 6 kind of special D.M. Bowman exams before they
 7 hired you?
 8 A. No. It was more of just, you know,
 9 giving your application. Some recruiter kind
 10 of lies to you a little bit, and then you get
 11 hired, and then you sat in for the orientation.
 12 They tell you about, you know, their rules and
 13 regulations, speeds, and they were a hazmat
 14 company so they went through hazmat training.
 15 Q. So you went through hazmat training?
 16 A. With them, yeah.
 17 Q. Did you drive a hazmat vehicle?
 18 A. No. Well, I don't think so.
 19 Q. Okay.
 20 A. But I was with someone for like the
 21 three days I was with D.M. Bowman so it could
 22 have been, but he had his hazmat license
 23 though.
 24 Q. Got it. So that was when you were kind
 25 of training, correct?

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1 Q. Got it. And were you going to be paid
 2 by the mile?
 3 A. Yes.
 4 Q. How much per mile?
 5 A. I think they were offering me between 34
 6 and 38 cents, but depending on fuel mileage and
 7 how fast I was going.
 8 Q. Sure.
 9 A. So a lot of extra stuff.
 10 Q. There were conditions on how much you
 11 would get, yes?
 12 A. Yes.
 13 Q. And you wouldn't be salaried, too, this
 14 would just be purely how much you made per
 15 mile, correct?
 16 A. Correct.
 17 Q. Okay. So you left after a few months?
 18 A. No.
 19 Q. No?
 20 A. Days.
 21 Q. Few days, sorry. Excuse me.
 22 A. I did the Indiana-Chicago trip twice
 23 before I had to ask whatever supervisor was
 24 there if that was going to be my thing, and he
 25 was like, yes, and I was like, no.

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1 Q. Then you left?
 2 A. Yeah.
 3 Q. Respect. So taking into account all of
 4 your previous experience with Swift/Central,
 5 which I'm going to lump together, and then
 6 Bowman, how many years had you been driving a
 7 truck total before January 20th of 2016?
 8 A. Probably close to, probably two years.
 9 Q. Almost two years?
 10 A. Yeah.
 11 Q. Okay.
 12 A. Just a few months shy of two years.
 13 Q. And in how many occasions total, and you
 14 can estimate on this, had you had the
 15 opportunity to drive in snow, snowy conditions?
 16 A. At least twice.
 17 Q. And that is before January of 2016?
 18 A. Okay. Then that is the one time.
 19 Q. Then one time, got it.
 20 A. I think.
 21 Q. What about icy conditions before January
 22 of 2016?
 23 A. I think it was twice. It would have
 24 been twice, yeah.
 25 Q. All right. You agree with me that the

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1 everyday -- slow it down; wear your seatbelt;
 2 pay attention; if it is raining, slow down;
 3 stuff like that everyday.
 4 Q. Sure. And those come through the
 5 QTRACS, right?
 6 A. Qualcomm, yeah.
 7 Q. Okay. Is the Qualcomm synonymous with
 8 QTRACS?
 9 A. QTRACS is first time I ever heard of it
 10 around here.
 11 Q. Okay. I'll show you in a minute why I
 12 call it QTRACS, but we will say through the
 13 Qualcomm then.
 14 So then you are told on a frequent
 15 basis drive safely, drive slowly with inclement
 16 weather conditions?
 17 A. Yeah.
 18 Q. Did you learn about night driving?
 19 A. That is just something that you --
 20 on-the-job training, period.
 21 Q. Got it. Common knowledge?
 22 A. Yeah. It is mostly -- that kind of
 23 started with Swift, you know, pay attention,
 24 realize the signs of fatigue, get out of your
 25 truck, stop, take a break, walk around, stuff

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1 number one rule of driving a truck is safety,
 2 yes?
 3 A. Yes.
 4 Q. And you agree that as a professional
 5 driver, you require special driving training?
 6 A. Yes.
 7 Q. We already talked about your CDL
 8 courses. Other than the course with Utah, when
 9 you began your employment with K & B, did you
 10 go through additional orientation?
 11 A. What do you mean?
 12 Q. Like did you have any kind of safety
 13 training when you began employment with K & B?
 14 A. All truck companies have their own
 15 little orientation safety things, and they --
 16 you always do a ride-along just to be sure you
 17 are not going to mess up their equipment.
 18 Q. Sure. Sure. Okay. And specific to the
 19 K & B course --
 20 A. Uh-huh.
 21 Q. -- did you learn about inclement weather
 22 condition driving?
 23 A. Yeah, but that is a daily ongoing thing.
 24 Q. Meaning what?
 25 A. Meaning through the little messages

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1 like that.
 2 Q. Okay. Do you always carry a copy of the
 3 Federal Motor Carrier Safety Regs in your
 4 truck?
 5 A. Yeah.
 6 Q. And has that been the case for all of
 7 the trucking companies you've worked for?
 8 A. Uh-huh.
 9 THE COURT REPORTER: Yes?
 10 A. I have -- yes. I have several copies of
 11 both books with hazmat and the Federal Motor
 12 Regulations?
 13 Q. Got it. You answered my question.
 14 On January 20, 2016, did you have an
 15 onboard camera in your cab by any chance?
 16 A. Probably. I mean, like wait, what do
 17 you mean? Like the actual disposable, or an
 18 actually camera that records?
 19 Q. A camera that records as you drive?
 20 A. No.
 21 Q. So driving a truck requires safe driving
 22 habits, yes?
 23 A. Yes.
 24 Q. Good health?
 25 A. Yes.

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- 1 Q. A sharp mind?
- 2 A. That is debatable.
- 3 Q. Debatable. Tell me why that is
- 4 debatable.
- 5 A. Everybody is not all that smart when it
- 6 comes to driving on the road regardless if you
- 7 are a truck driver or a four wheeler.
- 8 Q. Very fair. But you would agree with me
- 9 that when you are in charge of an 80,000-pound
- 10 vehicle --
- 11 A. Yes.
- 12 Q. -- you have to have a sharp mind, right?
- 13 A. Yes.
- 14 Q. Okay. And it is your obligation as a
- 15 trucker in charge of an 80,000-pound vehicle to
- 16 be in control of yourself and your vehicle,
- 17 right?
- 18 A. Yes.
- 19 Q. Well, because you have to drive at your
- 20 best regardless of whether anyone else is
- 21 paying attention, correct?
- 22 A. Right.
- 23 Q. Right. How do you generally navigate
- 24 while driving?
- 25 A. What do you mean?

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- 1 Q. And so do you have your phone like up on
- 2 the dashboard?
- 3 A. No. I'm not all that tall so I need all
- 4 the space so I can see.
- 5 Q. Okay. So where would your cell phone
- 6 generally be while you are operating your
- 7 truck?
- 8 A. Lower. There is -- cup holders, if I
- 9 need to, but I don't really have it in a way
- 10 that I can mess with it.
- 11 Q. Got it. It is just kind of in front of
- 12 you?
- 13 A. I can see but without having to --
- 14 Q. -- to turn your head away from the road,
- 15 correct?
- 16 A. Yes.
- 17 Q. And do you have it on loud, too, so she
- 18 can tell you --
- 19 A. No. I have everything turned off.
- 20 Q. Okay. Understood. And that would also
- 21 be the case in 2016?
- 22 A. Yes, everything was turned off.
- 23 Q. But you would still use Google Maps just
- 24 to double check --
- 25 A. -- traffic.

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- 1 Q. So do you get your routes from the
- 2 Qualcomm?
- 3 A. I have discharged routes, yes.
- 4 Q. And then I know I'm personally dependent
- 5 on Waze so I would have my -- have you ever
- 6 heard of Waze?
- 7 A. No.
- 8 Q. Okay. It is an application that tells
- 9 me the fastest route based on traffic --
- 10 A. Such as Google Maps and things like
- 11 that?
- 12 Q. Exactly. You don't use anything like
- 13 that?
- 14 A. The Qualcomm has a navigational system.
- 15 Q. Okay.
- 16 A. And I also check because Google has a
- 17 way of telling you if there is traffic or if
- 18 there is an accident, things like that.
- 19 Q. So you do use Google Maps?
- 20 A. Uh-huh.
- 21 Q. Yes?
- 22 A. Yes.
- 23 Q. And you would use Google Maps on your
- 24 phone?
- 25 A. Yes.

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- 1 Q. -- traffic?
- 2 A. Because the Qualcomm doesn't really tell
- 3 you that. It just gives you a route, a
- 4 specific route. Sometimes there has been
- 5 detours that Google Maps has told me about that
- 6 Qualcomm doesn't know.
- 7 Q. Sure. Look into Waze.
- 8 So you are familiar with the FMCSR?
- 9 A. Yes.
- 10 Q. You understand the purpose of the rules?
- 11 A. Yes.
- 12 Q. Where did you get that understanding?
- 13 A. Through training.
- 14 Q. And was that Utah training?
- 15 A. Yes.
- 16 Q. Have you ever in your -- well, now four
- 17 years of being a truck driver been told that
- 18 you have been in violation of FMCSR?
- 19 A. No.
- 20 Q. Do you agree that everyone operating a
- 21 motor vehicle has a duty to drive reasonably?
- 22 A. Yes.
- 23 Q. Do you agree as a truck driver because
- 24 you have a CDL, you have to follow the FMCSR
- 25 which are the industry standards?

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- 1 A. Yes.
- 2 Q. And because you have A CDL, the FMCSR
- 3 imposes upon you a duty to act carefully while
- 4 driving your truck?
- 5 A. You mean safely, yes.
- 6 Q. Yes. Is safely different than carefully
- 7 in your mind?
- 8 A. A little bit.
- 9 Q. Tell me why.
- 10 A. I mean carefully is, you can be driving
- 11 slower than traffic, and that could cause
- 12 problems. I kind of learned that the hard way
- 13 once driving through Chicago the first time, I
- 14 drove carefully and not safely, and that caused
- 15 a bunch of cars to kind of pack into the space
- 16 that I left, derogatory like roaches really,
- 17 and they just swarmed that little space.
- 18 Q. Got it.
- 19 A. So there is a difference.
- 20 Q. So you were trying to keep a safe
- 21 distance between the vehicle in front of you --
- 22 A. Yeah.
- 23 Q. -- and you had maybe too much distance?
- 24 A. A little bit.
- 25 Q. Go ahead, sorry.

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- 1 mirrors scans when you are operating your motor
- 2 vehicle?
- 3 A. About every three seconds.
- 4 Q. Every 30 seconds?
- 5 A. Three.
- 6 Q. Three, got it.
- 7 A. Yeah.
- 8 Q. Does that involve you even rotating your
- 9 neck at all, or can you do your mirrors scans
- 10 from just glancing with your eyes and your
- 11 peripheral vision?
- 12 A. No, I have to turn my head.
- 13 Q. You do have to turn your head?
- 14 A. Yeah. The way that the truck is, the
- 15 length of the truck, you know, the depth, you
- 16 have to look at all of the mirrors because
- 17 people they hang out in spots.
- 18 Q. In your blind spots?
- 19 A. They are not really blind spots. They
- 20 are just harder to see.
- 21 Q. Got it. Got it. And tell me a little
- 22 bit about how your seat is positioned -- your
- 23 driving seat in your truck. Because you are
- 24 little like me, so I'm trying to picture how it
- 25 works.

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- 1 A. It caused cars to just pack in. So I
- 2 learned to leave space, but not that much
- 3 space.
- 4 Q. Got it. So you have to hit the perfect
- 5 formula of perfect amount of space between you
- 6 and the vehicle in front of you?
- 7 A. Yeah. So you can drive carefully, but
- 8 sometimes it is not always that safe.
- 9 Q. Right. And you have to drive
- 10 defensively, correct?
- 11 A. True.
- 12 Q. Were you taught about defensive driving?
- 13 A. Yes.
- 14 Q. Tell me a little bit about what
- 15 defensive driving means?
- 16 A. To me?
- 17 Q. To you.
- 18 A. That is paying attention to everything
- 19 going on around me, maintaining my lane, if I
- 20 am looking -- always looking forward, slowing
- 21 down if need be, and giving the car in front of
- 22 me plenty of space. And like I said, watching
- 23 in my mirrors because people have done some
- 24 really crazy things.
- 25 Q. I bet. And how frequently do you do

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- 1 A. For me, this truck that I'm in now, I
- 2 sit fairly close to the floor.
- 3 Q. Okay. So you can reach the pedals?
- 4 A. That and I don't like the bouncing.
- 5 Q. Got it. And in January of 2016, did you
- 6 sit a little bit higher up?
- 7 A. In that particular truck, I did sit a
- 8 little higher.
- 9 Q. Would you find that you bounced more
- 10 frequently?
- 11 A. No. It was just the way that the seats
- 12 were. Like in this truck, the seat is
- 13 different from the truck -- than that
- 14 particular truck.
- 15 Q. Got it. Got it. When did you switch
- 16 trucks?
- 17 A. You mean now?
- 18 Q. Between the one you had in 2016 and the
- 19 one you have now?
- 20 A. I have had two. So this recent one, I
- 21 don't know maybe a few months ago.
- 22 Q. And what was the truck that you switched
- 23 to immediately after the truck which was
- 24 involved in the accident? Was it a different
- 25 kind of truck, a different weight that you

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1 could carry?
 2 A. No, they are all the same. They are
 3 just, you know, some were maybe a little older,
 4 but they are all basically the same.
 5 Q. Got it. So with K & B, how many trucks
 6 have you had total?
 7 A. In my lifetime you mean?
 8 Q. Yeah.
 9 A. Four.
 10 Q. And the one you were operating in
 11 January of 2016, would have been your first?
 12 A. Second. Yeah, it was my second truck.
 13 Q. For how long did you drive your first
 14 truck through K & B?
 15 A. I think I drove that one for maybe three
 16 or four months.
 17 Q. What were the circumstances in which you
 18 switched from that truck to the truck you drove
 19 in January 2016?
 20 A. It was having electrical issues, and
 21 they couldn't figure out where exactly the
 22 issue was coming from.
 23 Q. Got it?
 24 A. So it was best just to switch the truck.
 25 Q. Better safe than sorry?

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1 A. A-R-D.
 2 Q. How long do you two talk every Monday?
 3 A. For a few minutes. It is just reading
 4 it off and asking me if I understand it, and if
 5 I have questions.
 6 Q. Like around 15 minutes?
 7 A. No, it doesn't take that long.
 8 Q. Okay. And is he reading you off any
 9 potentially new protocol?
 10 A. No. It is the same thing all the time.
 11 Q. Same thing every Monday?
 12 A. Yeah.
 13 Q. Okay. And in 2015, was Matt Ard your
 14 dispatcher, too?
 15 A. No, I don't think so.
 16 Q. Was it Josh Winkle?
 17 A. Yeah, that is his name.
 18 Q. And for how long had Mr. Winkle been
 19 your dispatcher?
 20 A. From the time that I started until the
 21 time he quit.
 22 Q. Got it. So he is no longer with K & B?
 23 A. No.
 24 Q. Do you know roughly when he quit?
 25 A. No.

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1 A. Well, yeah, they offered. They said I
 2 could come in and get it fixed, or I could
 3 switch trucks. Switched trucks, and I was off.
 4 Q. All right. Might as well.
 5 All right. So we talked about K & B's
 6 training a little bit and the orientations, are
 7 there -- since you started back in 2014 --
 8 sorry, 2016?
 9 A. '15.
 10 MS. ELI: 2015.
 11 Q. (By Ms. Benhamou) Sorry, 2015. Let me
 12 write it down so I don't forget.
 13 Have you had any recurring like
 14 continuing education courses through K & B?
 15 A. Meaning I would have to actually go into
 16 the terminal and have courses?
 17 Q. Correct.
 18 A. No. Every Monday we have a safety talk.
 19 Q. And how do you have the safety talk?
 20 A. On the phone.
 21 Q. And who is that talk with?
 22 A. My dispatcher. So for -- I don't
 23 remember the name of my first dispatcher, but
 24 right now it is Matt Ard.
 25 Q. Spell his last name, please.

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1 Q. Within the last year?
 2 A. It has been longer than that I think.
 3 Q. Okay. Have you -- well, have you
 4 received a copy of the K & B handbook?
 5 A. Yes.
 6 Q. Do you keep a copy of it in your truck?
 7 A. Probably.
 8 Q. You probably don't have to revisit it
 9 very often, correct?
 10 A. No.
 11 Q. I am correct? We had a double negative.
 12 It was my fault.
 13 A. Okay.
 14 Q. Am I correct in saying that you don't
 15 have to revisit the handbook very often?
 16 A. No.
 17 Q. No I'm not correct?
 18 A. I don't have to revisit the handbook
 19 very often. If I have questions, I can always
 20 call Matt, and if he doesn't know, he will send
 21 me to somebody else.
 22 Q. Perfect. And that is Matt Ard?
 23 A. Yes.
 24 Q. Okay, got it. And in your experience as
 25 a professional driver, either through courses

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1 or just on-the-job training, have you ever been
 2 made aware of some of the dangers associated
 3 with vehicles that have become disabled on
 4 interstate highways?
 5 A. Such as four-way flashers, cars are just
 6 hanging out on the side?
 7 Q. Exactly.
 8 A. Yes.
 9 Q. And tell me what you do in circumstances
 10 where you are approaching a vehicle that is on
 11 the side of the road?
 12 A. If I can, I will get over; if not, I
 13 will slow down.
 14 Q. Okay. And generally are you driving in
 15 the right-hand lane?
 16 A. Yes.
 17 Q. Always?
 18 A. Depending on the situation.
 19 Q. Sure.
 20 A. If there is signs that says, trucks to
 21 the left or trucks in the center, you know.
 22 Q. You follow the rules?
 23 A. Yes.
 24 Q. Okay. Have you heard the safety
 25 campaign, sharing the road with others safely?

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1 Q. So you have two sets of lights on your
 2 truck, right?
 3 A. Correct.
 4 Q. High beams and low beams?
 5 A. Correct.
 6 Q. My understanding is that the low beams
 7 don't shine as far out into the distance as
 8 your high beams do, is that true?
 9 A. That is what they say. For me
 10 personally, I don't really notice a difference.
 11 Probably since I drive so much at night, I have
 12 good night vision. So it all looks the same to
 13 me.
 14 Q. Okay. Generally when you are driving,
 15 do you rely on your low beams or your high
 16 beams?
 17 A. Low beams.
 18 Q. Low beams. Would you agree that it
 19 takes you longer to stop your tractor-trailer
 20 than it would take to stop a regular non-CMV
 21 vehicle?
 22 A. Yes.
 23 Q. Do you happen to know the average
 24 stopping distance for a loaded tractor-trailer
 25 traveling at 55 miles per hour?

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1 A. I know for motorcycles specifically,
 2 yeah.
 3 Q. Okay. Would you agree as part of that
 4 road campaign that whenever possible, you
 5 should try to give more room to other vehicles
 6 on the road?
 7 MS. ELI: I'm just going to
 8 object to the foundation of this campaign.
 9 Only answer what you know about this campaign.
 10 A. I don't know much about the campaign. I
 11 just know specific safety-wise, give distance;
 12 if people are on the side of the road, move
 13 over; if not, slow down.
 14 Q. Perfect. So you've been trained on
 15 proper space management methods?
 16 A. Yes.
 17 Q. And we talked about defensive driving
 18 techniques. Do you agree that to drive safely,
 19 you must decrease your speed as your visibility
 20 decreases?
 21 A. Yes.
 22 Q. And do you agree that your high beams
 23 would shine substantially further than your low
 24 beams?
 25 A. What are you asking me?

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1 A. You mean a fully loaded or empty
 2 trailer?
 3 Q. Fully loaded.
 4 A. They say it is half the distance of a
 5 football field, but for me personally, it has
 6 taken about -- without, you know, slamming on
 7 the brakes, about that, yeah.
 8 Q. It takes about half a football field?
 9 A. Yeah, about 10, 15 seconds.
 10 Q. And have you noticed in your driving
 11 that your braking distance can vary based upon
 12 weather conditions?
 13 A. Yeah.
 14 Q. So if it is raining outside, maybe you
 15 would start braking earlier rather than the
 16 time you would start braking normally if it was
 17 dry outside?
 18 A. Yeah, you can hydroplane.
 19 Q. Okay. Same thing for snow and ice? You
 20 would start braking earlier?
 21 A. You would start braking way earlier.
 22 Q. Okay. Are you familiar with the Federal
 23 Motor Reg 392.14?
 24 MS. ELI: Object just to the
 25 numbers.

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1 A. Yeah, those numbers, I don't know.
 2 Q. (By Ms. Benhamou) Okay. So it is just
 3 hazardous conditions, extreme caution? Are you
 4 familiar with that one? I can show it to you.
 5 MS. BENHAMOU: Here we go. We
 6 can mark this actually as Exhibit No. 1.
 7 Lamis, I have a copy for you, too.
 8 (Exhibit No. 1 was marked for
 9 identification.)
 10 Q. (By Ms. Benhamou) Are you familiar with
 11 this federal regulation?
 12 A. In common-sense terms, yes.
 13 Q. Do you agree that the Reg states, or
 14 rather it mandates that speeds shall be reduced
 15 when such conditions exist?
 16 A. Common sense, yes.
 17 Q. But it also says it in the language?
 18 A. In this first one?
 19 Q. Yes, correct.
 20 A. Uh-huh.
 21 Q. And based on your common sense, tell me
 22 what "sufficiently dangerous conditions" would
 23 mean to you?
 24 A. I really want to say anytime it can be
 25 really dangerous. It just depends on the

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1 weather is too bad or whatever, let dispatcher
 2 know, communication.
 3 Q. Got it. Okay. Let's talk about
 4 logbooks. You agree that it is very important
 5 to keep accurate driving logs?
 6 A. Correct.
 7 Q. Tell me why that is important?
 8 A. You get tired. It is also -- I don't
 9 really -- actually, I don't really know the
 10 point of the logbooks, but I do know that a lot
 11 of drivers if they drive too long without
 12 breaks or whatever, you can get tired. So I
 13 can understand that part of it, but the rest.
 14 Q. Okay. Would one reason why drivers
 15 might falsify their logs be to try to work
 16 extra hours to make more money?
 17 MS. ELI: I'm going to object to
 18 an incomplete hypothetical and foundation.
 19 Q. (By Ms. Benhamou) If you understood my
 20 question, you can answer, unless Lamis directs
 21 you otherwise.
 22 A. Okay. So ask it again.
 23 Q. So I was trying to think about reasons
 24 why drivers would falsify their logs, and
 25 hypothetically -- and I'm not saying you

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1 situation of people who are around if you are
 2 in that situation. It doesn't matter if it is
 3 sunny and dry --
 4 Q. Sure.
 5 A. -- really bad things could happen.
 6 Q. You have to pay attention at all times?
 7 A. Yeah.
 8 Q. And you have to anticipate what other
 9 drivers on the road might do, right?
 10 A. Correct.
 11 Q. It sounds exhausting. Is it exhausting?
 12 MS. ELI: I'm going to object to
 13 the question for the relevance of it. Don't
 14 answer that. I would ask, please, keep going.
 15 Q. (By Ms. Benhamou) Okay. Are you aware
 16 that you have the right to refuse to drive in
 17 conditions you deem unsafe?
 18 A. Yes.
 19 Q. Have you ever had to do that?
 20 A. No.
 21 Q. Do you know anywhere in the K & B policy
 22 or handbook where it would say you have the
 23 right to refuse to drive in unsafe conditions?
 24 A. Specifically, no, but it is verbally
 25 told to us that if you are tired or if the

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1 specifically -- would one reason be to work
 2 extra hours so that they could incur extra
 3 income?
 4 A. That has been a debate, but I don't know
 5 anybody that has ever done it.
 6 Q. It doesn't speak to you personally?
 7 A. No. I make enough money without having
 8 to lie about my hours.
 9 Q. That's good. Have you ever been cited
 10 for lying about your logbooks?
 11 A. Not intentionally, no.
 12 Q. What do you mean by that?
 13 A. Like there has been an instance where I
 14 put myself on duty, but I started driving
 15 apparently too soon, and then it just kicked
 16 off the on-duty time I had into drive time, and
 17 I didn't realize it until the very next day,
 18 and it was too late to fix it.
 19 Q. Got it. And how do you -- around what
 20 year did that happen?
 21 A. Last year sometime. I don't really
 22 remember.
 23 Q. With K & B?
 24 A. Correct.
 25 Q. And tell me in 2016, did you keep a hard

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1 copy logbook?
 2 A. If the Qualcomm went down, yes.
 3 Q. Okay. How frequently would the Qualcomm
 4 go down?
 5 A. I've never had to use it.
 6 Q. You've never had to use Qualcomm?
 7 A. The paper logs.
 8 Q. Got it. So it is just as a backup?
 9 A. Yes, that is what they are for. You are
 10 not allowed to have two sets of logs in your
 11 truck at any time.
 12 Q. Understood. And you don't have two sets
 13 of logs?
 14 A. No. I have paper logs for backup. They
 15 are just blank, and then I have the E-logs.
 16 Q. Okay. And tell me around what time of
 17 day would you log your hours or log your time?
 18 A. What do you mean? It does manually by
 19 the minute. So whenever I start my clock
 20 on-duty time, that is when my clock starts.
 21 Q. Okay. Tell me a little bit about the
 22 11-hour rule?
 23 A. You mean hours of service period, or
 24 just the 11 hours?
 25 Q. Just the 11-hour rule.

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1 A. Well, wait a minute. What do you mean?
 2 Q. So I would anticipate that maybe a
 3 dispatcher -- and this is hypothetical --
 4 didn't fully understand that you were out of
 5 hours, asked you to do a job that you just
 6 didn't have enough hours to do, and then would
 7 it be incumbent on you to say, hey, no, I can't
 8 take that load?
 9 A. Okay. You need to kind of break that
 10 down just a little bit more. Do you mean as in
 11 I'm supposed to drive?
 12 MS. ELI: Let her ask you the
 13 question all over again.
 14 Q. (By Ms. Benhamou) Okay. I'll ask it all
 15 over again. Generally your dispatchers know
 16 what your hour logs look like, right?
 17 A. Right.
 18 Q. Has it ever happened where a dispatcher
 19 inadvertently misunderstood how many hours left
 20 you had to drive under the rules and sent you
 21 on a trip that you couldn't complete?
 22 A. I'm a little confused. Like what do you
 23 mean, am I supposed to just start driving, or
 24 you just telling me this is my load
 25 information, and can you accept or not, is

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1 A. You can only drive 11 hours in a 14-hour
 2 period.
 3 Q. Okay. And how many hours of sleep do
 4 you have to get?
 5 A. You have to be either off duty, sleeper,
 6 or a combination of both for ten hours minimum.
 7 Q. And that is within a 24-hour period?
 8 A. That is whenever. So if you only drive
 9 for 5 minutes down the road and you want to
 10 take another 10-hour break, just to get those
 11 10 hours, that 5 minutes back you can, or you
 12 can take a split sleeper berth. An eight-two,
 13 eight hours in the sleeper, two however you
 14 wish to get that time back, but you have to
 15 take ten hours.
 16 Q. And in the sleeper berth is it strictly
 17 for sleeping, or can you watch TV in the
 18 sleeper berth?
 19 A. Whatever you do back there in the back
 20 is your business.
 21 Q. Got it. Okay. Thank you. Have you
 22 ever been dispatched by K & B when you've been
 23 out of hours?
 24 A. No.
 25 Q. Okay. If you had been --

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1 that --
 2 Q. The latter. This is your load
 3 information, can you accept it or not.
 4 A. That has happened, but it is my job to
 5 go over it and look at it and check my hours.
 6 And if I can't do it, go back and say, hey, I
 7 cannot do this for my hours. Then they will
 8 say, okay, and they will find me something
 9 else.
 10 Q. Got it. Is there someone at K & B who
 11 would be responsible for auditing your logs in
 12 2016?
 13 A. Logs?
 14 Q. Yeah, your driving logs?
 15 A. Logs. I mean literally --
 16 Q. Oh, logs is a department?
 17 A. Yeah.
 18 Q. Sorry. Do you know who works in logs?
 19 A. I just know them as logs. I'm sorry.
 20 Q. Okay. Would you agree with me that one
 21 of K & B's number one -- well, their number one
 22 goal is to deliver customers' freight safely
 23 and on time while still abiding by the Federal
 24 Motor Carrier Safety Regs?
 25 A. Yes.

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1 Q. And you would agree that any preventable
2 late delivery to a critical customer may result
3 in termination?

4 A. What do you mean by "preventable"?

5 Q. So if you overslept or failed to set
6 your alarm?

7 A. So ask the question again.

8 Q. Sure. You would agree that any
9 preventable late delivery to a critical
10 customer may result in immediate termination?

11 A. No.

12 Q. You don't know?

13 A. No. I mean, personally it has not ever
14 happened to me so I cannot say.

15 Q. Okay. Do you have truck driver friends
16 who work with K & B?

17 MS. ELI: I'm going to object to
18 the relevance of that. If you know other K & B
19 drivers, go for it, but if not --

20 A. I'm anti-social so no.

21 Q. (By Ms. Benhamou) Are you eligible for
22 bonuses through K & B?

23 A. They are called safety bonuses.

24 Q. Explain to me how those work, please.

25 A. As far as I'm aware, as long as you've

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1 be safe so that you can get your bonus type of
2 thing. Have you seen those messages?

3 A. Yeah. But it is mostly just reminders
4 that hey we do have a safety bonus program;
5 hey, we do have a referral program; hey, we
6 have this and that, and the safety just comes
7 everyday, be safe period.

8 Q. Got it. So safety comes every single
9 day?

10 A. Yeah, safety comes every single day.

11 Q. And weather comes every single day?

12 A. Yes, I do get weather for different
13 parts of the country, yes.

14 Q. And you are obligated to read all of
15 those, right?

16 A. Not necessarily.

17 Q. No?

18 A. I mean they pretty sure want you to read
19 them.

20 Q. Understood. Let's talk about the day of
21 the accident. Do you have an independent
22 recollection of the wreck, meaning before
23 looking at a police report or before we brought
24 a lawsuit, did you remember the accident?

25 A. Yeah.

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1 not had any accidents, or you've not got any
2 tickets -- speeding tickets, you've not been in
3 violation like at the scale house, I think that
4 is it, but that is about as far as I know.

5 Q. Okay. And in your time with K & B, have
6 you gotten the safety bonus each year?

7 A. It is twice a year. I think I've gotten
8 it at least twice. I'm not really sure.

9 Q. And then are you paid with K & B by the
10 mile, too?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. Do you have a salary, base salary in
15 addition?

16 A. No, just all by mile.

17 Q. Okay. And how much are you paid by the
18 mile?

19 A. Right now I make fifty cents a mile.

20 Q. And is it custom and practice with K & B
21 to send you messages through the Qualcomm that
22 reinforces your bonus eligibility periodically?

23 A. What do you mean?

24 Q. So when I would go through QTRACS
25 records I saw some -- some mention of, Reminder

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1 Q. Do you recall the weather conditions on
2 the morning of January 20th?

3 A. It was slick, a little icy.

4 Q. Was it still dark outside?

5 A. Yeah.

6 Q. You said that with emphasis?

7 A. Because I was surprised I don't remember
8 it being that dark.

9 Q. Do you recall what your normal sleep
10 times were in January of 2016?

11 A. They always vary.

12 Q. Okay. So maybe one day you would be
13 sleeping during the day, the next day --

14 A. Not -- not that much variance. But
15 there is -- I might go to sleep one day from
16 like noon to 10:00 p.m. or something like that,
17 or 1:00 to 11:00, something like that, or
18 11:00. It just depends on when I finish my
19 load, and what time it has to be there. So a
20 little bit of variance.

21 Q. Got it. But generally, you would be in
22 the sleeper berth during daytime hours for 9:00
23 to 5:00 people, does that make sense? I can
24 clarify.

25 A. Yeah.

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